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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ABEL JALIL, NEVEEN

ART UNIT PAPER NUMBER

2165

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/006,466

Applicant(s)

EKKEL, ERIK

Examiner

Neveen Abel-Jalil

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. The Request for Reconsideration filed on June 13, 2005 has been received and entered.
Claims 1-21 are pending.

2. Amendment to the abstract filed on June 13, 2005 is entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-7, 9-12, and 16-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Caplan (U.S. Pub. No. 2003/0050834 A1).

As to claim 1, Caplan discloses a system for peer-to-peer access to a collection of data, comprising:

a. a musicbox (See page 9, paragraph 0109, wherein “musicbox” reads on “media player”) comprising:

i. a persistent data store, the persistent data store containing a plurality of individually selectable data files of a predetermined data format, some of the data files being pre-loaded onto the persistent data store (See page 10, paragraphs 0114-0116, wherein “individually selectable data files” reads on “playlist”);

ii. a data communications interface operatively connected to a data communications network -to effect a peer-to-peer network (See page 6, paragraph 0078); and

iii. a controller operatively connected to the persistent data store and the data communications interface (See page 2, paragraphs 0014-0018, prior art); and

b. software executing in the musicbox (See page 6, paragraphs 0076-0077), the software capable of:

i. identifying other musicboxes executing instances of the software (See page 11, paragraphs 0142-0144, also see page 10, paragraphs 0123-0125);

ii. allowing peer-to-peer sharing of the data files with the identified other musicboxes, the sharing restricted to the identified other musicboxes having authorization to participate in the peer-to-peer sharing of data files (See page 13, column 2, lines 27-67, and see page 11, paragraphs 0129-0132);

iii. securing the data files from unauthorized access (See page 13, column 2, lines 27-67, and see page 11, paragraphs 0129-0132);

iv. reproducing the data files into a predetermined perceptible format (See page 12, paragraphs 0147-0150, also see page 1, paragraph 0006, prior art); and

v. allowing users of the software to manipulate the data files (See page 12, paragraphs 0150-0151, also see page 9, paragraphs 0107-0109).

As to claim 3, Caplan discloses wherein the data files comprise at least one of audiovisual works, music recordings, performance recordings, digitized film recordings, digitized video recordings, graphic work images, text, and software (See page 5, paragraphs 0054-0058).

As to claim 4, Caplan discloses wherein securing files from unauthorized access in step (b)(iii) comprises at least one of:

- (1) securing a data file from unauthorized copying (See page, paragraphs 0027-0039);
- (2) securing a data file for authorized access (See page 13, column 2, lines 54-67, also see page 6, paragraph 0072);
- (3) securing an predetermined collection of data files from unauthorized copying (See page 13, column 2, lines 54-67, also see page 6, paragraph 0072); and
- (4) securing an predetermined collection of data files for authorized access (See page 13, column 2, lines 54-67, also see page 6, paragraph 0072).

As to claim 5, Caplan discloses further comprising an audio-visual interface to export audio and/or visual data for further reproduction of content within the data files (See page 12, paragraphs 0152-0157).

As to claim 6, Caplan discloses wherein the musicbox is selected from at least one of specialized musicbox devices and personal computers (See page 12, paragraphs 0150- 0152, also see page 1, paragraph 0006, prior art).

As to claim 7, Caplan discloses further comprising a central server to provide registration services, the central server being a peer participant in the peer-to-peer network (See page 14, column 2, lines 1-29).

As to claim 9, Caplan discloses a method of distributing data files for a system of claim 1, comprising:

- a. pre-loading a plurality of data files onto the persistent data store from a larger set of data files (See page 14, column 1, lines 1-30);
- b. initializing access of the system to a peer-to-peer network (See page 13, column 2, lines 27-67, wherein “initializing access” reads on “activation”);
- c. identifying other systems available on the peer-to-peer network (See page 13, column 2, lines 27-67);
- d. determining which of the data files on the other identified systems are not present on the persistent data store (See page 11, paragraphs 0129-0132);
- e. identifying the plurality of data files on the persistent data store to the other identified systems (See page 11, paragraphs 0129-0132, also see page 1, paragraph 0006, prior art);
- f. allowing a user to catalog the data files available on the identified systems (See page 12, paragraphs 0154-0157);
- g. allowing the user to select a data file from the plurality of data files identified on the peer-to-peer network (See page 11, paragraphs 0129-0132); and

h. allowing the user to render the data files into a desired perceptible format (See page 12, paragraphs 0147-0150).

As to claim 10, Caplan discloses comprising requiring a user to log into the peer-to-peer network and presenting a user interface to the user appropriate to allow the user to select one or more categories of data files available from a larger set of such categories (See page 12, paragraph 0157, also see page 11, paragraphs 0130-0135).

As to claim 11, Caplan discloses further comprising requiring access by the musicbox to the peer-to-peer network on a predetermined periodic basis (See abstract).

As to claim 12, Caplan discloses comprising allowing user to purchase a data file for permanent access, the permanent access comprising downloading the data file onto a storage medium of the user's choice (See page 11, paragraphs 0143-0144, also see page 12, paragraph 0150).

As to claim 16, Caplan discloses wherein step (b) further comprises accessing a central server to accomplish the initializing of access to the peer-to-peer network, the central server being a peer participant in the peer-to-peer network (See page 5, paragraphs 0058-0063).

As to claim 17, Caplan discloses wherein step (c) further comprises at least one of identifying a musicbox to a central server, identifying a musicbox to other participants in the

peer-to-peer network by broadcasting an identity of the musicbox to the other participants in the peer-to-peer network, and identifying a musicbox to other participants in the peer-to-peer network by pinging for an identity of the other participants in the peer-to-peer network (See page 8, paragraph 0090, also see pages 11-12, paragraphs 0145-0147).

As to claim 18, Caplan discloses wherein step (e) further comprises programmatically providing one or more participants in the peer-to-peer network with a description of content available at a musicbox to allow users to scout for desired content (See page 11, paragraphs 0129-0135, also see page 11, paragraph 0145).

As to claim 19, Caplan discloses comprising:

- a. gathering data of the user's usage of the musicbox into a user data profile (See page 12, paragraphs 0152-0156, also see page 10, paragraphs 0116-0125)
- b. making the user data profile available to a content provider (See page 13, column 1, lines 26-67).

As to claim 20, Caplan discloses further comprising using the user data profile by a provider of data files to generate messages targeted to the user based where the targeted messages comprise at least one of advertisements, announcements, and samples of further data similar to that in the profile data. (See page 13, column 2, lines 1-30, also see page 12, paragraph 0150).

As to claim 21, Caplan discloses a system for peer-to-peer access to a collection of data, comprising:

a. means for storing persistent data, the persistent data comprising a plurality of data files of a predetermined data format, the data files further secured from unauthorized access (See page 13, column 2, lines 31-67);

b. means for data communications, operatively connected to the means for storing persistent data (See page 11, paragraph 0144, wherein “storing” reads on “download”, also see page 10, paragraphs 0124-0126); and

c. means for accessing the persistent data, operatively in communication with the means for storing persistent data and the means for data communications (See page 11, paragraph 0144, also see page 10, paragraphs 0124-0126), capable of:

i. identifying other systems executing the means for accessing the persistent data (See page 11, paragraphs 0129-0135);

ii. allowing peer-to-peer sharing of the persistent data with the identified other systems, the sharing restricted to the identified other systems (See page 11, paragraphs 0129-0135, and see page 11, paragraph 0144); and

iii. allowing users of the means for accessing the persistent data to manipulate the persistent data (See page 12, paragraphs 0150-0151, also see page 9, paragraphs 0107-0109).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 8, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplan (U.S. Pub. No. 2003/0050834 A1) in view of Cooper et al. (U.S. Pub. No. 2001/0051996 A1).

As to claim 2, Caplan does not teach wherein the data files comprise works subject to copyright and workings not subject to copyright.

Copper et al. teaches wherein the data files comprise works subject to copyright and workings not subject to copyright (See page 8, paragraphs 0099-0126, also see page 1, paragraph 0006).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Caplan to include wherein the data files comprise works subject to copyright and workings not subject to copyright.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Caplan by the teaching of Cooper et al. to include wherein the data files comprise works subject to copyright and workings not subject to copyright because it creates a secure and safe method for authentication and collecting royalties.

As to claim 8, Caplan does not teach comprising an authorization device, comprising at least one of an electronic smart card, a mechanical smart card, and an optical key smart card.

Cooper et al. teaches comprising an authorization device, comprising at least one of an electronic smart card, a mechanical smart card, and an optical key smart card (See page 13, paragraphs 0187-00196).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Caplan to include comprising an authorization device, comprising at least one of an electronic smart card, a mechanical smart card, and an optical key smart card.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Caplan by the teaching of Cooper et al. to include comprising an authorization device, comprising at least one of an electronic smart card, a mechanical smart card, and an optical key smart card because it creates a secure and safe method for payment and user profile storage.

As to claim 13, Caplan does not teach further comprising limiting a user to at least one of a read only or transient access mode.

Cooper et al. teaches further comprising limiting a user to at least one of a read only or transient access mode (See pages 3-4, paragraphs 0043-0046)

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Caplan to include further comprising limiting a user to at least one of a read only or transient access mode.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Caplan by the teaching of Cooper et al. to include further comprising

limiting a user to at least one of a read only or transient access mode because it creates a secure and safe method for authentication and collecting royalties.

As to claim 14, Caplan does not teach wherein step (b) further comprises:

- i. requiring the user to obtain a subscription;
- ii. registering the user once the subscription is obtained; and
- iii. collecting and distributing appropriate royalties to content creators at least

partially based on the user's subscription.

Cooper et al. teaches wherein step (b) further comprises:

- i. requiring the user to obtain a subscription (See page 3, paragraph 0042, wherein “subscription” reads on “registered”);
- ii. registering the user once the subscription is obtained (See page 7, paragraphs 0085-088, also see page 8, paragraph 0124); and
- iii. collecting and distributing appropriate royalties to content creators at least partially based on the user's subscription (See page 17, paragraph 0275, also see page 13, paragraph 0195).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Caplan to include wherein step (b) further comprises:

- i. requiring the user to obtain a subscription;
- ii. registering the user once the subscription is obtained; and

iii. collecting and distributing appropriate royalties to content creators at least partially based on the user's subscription.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Caplan by the teaching of Cooper et al. to include wherein step (b) further comprises:

i. requiring the user to obtain a subscription;
ii. registering the user once the subscription is obtained; and
iii. collecting and distributing appropriate royalties to content creators at least partially based on the user's subscription because it creates a secure and safe method for authentication and collecting royalties.

As to claim 15, Caplan as modified discloses wherein the subscription comprises at least one of monthly fees, pre-paid content purchase, and per unit of content purchase (See page 12, paragraphs 0150-0152).

Response to Arguments

7. Applicant's arguments filed on June 13, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that "Caplan does not teach or suggest a music box that includes a persistent data store, or a data communications interface or a controller

operatively connected to the persistent data store” is acknowledged but not deemed to be persuasive.

The Examiner maintains that Caplan discloses a media player that renders streaming files of different content including music.

Nowhere in the claim language is “music box” defined in anyway differently than merely just that, a music box. The Examiner does not clearly view the different structure or function by the merely disclosure of a “a music box”. Therefore, broadly interpreted, the “music box” of the instant application reads on “media player” disclosed in Caplan page 9, paragraphs 0108-0109 wherein viewing media files on a customized interface (i.e. portal) using customized controls is disclosed, those files are then capable of being stored on the user device to further participate in peer-to-peer sharing.

Windows media player as defined in a Windows XP 2000 environment (See the article entitled: Microsoft Windows®XP embedded-What’s New) as having a persistent storage connection and a data communication interface.

In response to applicant’s argument that “Caplan does not teach or suggest software executing in the music box” is acknowledged but not deemed to be persuasive.

The Examiner maintains that Caplan disclosed a media player (i.e. music box) application running on windows platform executing software on page 5, paragraph 0064, and on page 6, paragraph 0074. Anytime a user wants to search or access media files from the Internet, the media player application will execute software to render the request or broadcasted files. It is common knowledge, if an application runs on a computer, then it certainly executes software.

According Microsoft TV technologies article teaches that windows media player running in a Windows environment executes software and integrates with variant hardware interfaces to better accommodate diverse media content.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2165

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil
September 19, 2005


CHARLES RONES
PRIMARY EXAMINER